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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM J. JONES,

Defendant and Appellant.

B214347

(Los Angeles County  
Super. Ct. No. TA092408)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
John J. Cheroske, Judge. Affirmed as Modified.

David L. Polsky, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lawrence M.  
Daniels and Michael R. Johnsen, Deputy Attorneys General, for Plaintiff and  
Respondent.

A jury convicted defendant William J. Jones of assault with a firearm and carjacking (Pen. Code, §§ 245, subd. (a)(2) & 215, subd. (a)),<sup>1</sup> and found true allegations that he personally used a firearm (§§ 12022.5 & 12022.53, subd. (b)). The jury acquitted defendant of attempted kidnapping (§ 664/207, subd. (a)). It deadlocked on the charge of attempted willful, deliberate, and premeditated murder (§ 664/187), and the trial court declared a mistrial on that count. Later, defendant pled no contest to attempted murder (unpremeditated) and admitted using a firearm in the crime (§ 12022.53, subd. (c)). The court sentenced him to a total term of 25 years in state prison.

Defendant appeals from the judgment of conviction. His sole contention is that the court erred in imposing a \$20 DNA penalty assessment. Respondent concedes the issue, and we agree.

## **BACKGROUND**

Because defendant does not challenge the sufficiency of the evidence, we summarize the prosecution's case without unnecessary detail.

Around 11:00 a.m. on August 21, 2007, Kenneth Johnson was mowing the yard of his home on Caswell Street in Compton when he noticed a couple of men, one of whom was defendant, near his truck parked across the street. Johnson walked over to the truck, and saw a jacket in the back. He asked defendant to remove it. Defendant looked at him "nutty like," and slowly took the jacket. Johnson got in the truck to move it. Defendant approached and said, "This is my street." Johnson then parked the truck on the opposite side of the street, directly in front of his house, and returned to cutting the grass.

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<sup>1</sup> All undesignated section references are to the Penal Code.

Perhaps 30 to 40 minutes later, defendant approached Johnson's house on foot. As defendant neared the yard, Johnson went to meet him. When Johnson was about 15 feet away, defendant pulled out a gun and shot Johnson once in the chest. Johnson ran toward his house and defendant fired at least two more times. Once bullet struck the front door, and the other struck the stucco to the right of the door.

Defendant fled on foot. Down the street he encountered Julius Dunn, who was in his van in the driveway of his mother's house. Defendant pulled out a gun, pointed it at Dunn, and said that he wanted the vehicle. Dunn got out and went inside to call the police. Defendant drove off. Shortly after 4:00 p.m., he was apprehended by the police at an automobile body shop still in possession of the van.

Johnson was treated at the hospital and survived. The bullet wound to the chest was a through-and-through wound and did not strike any vital organs.

## **DISCUSSION**

Defendant contends that the trial court erred in imposing a \$20 DNA penalty assessment under Government Code section 76104.7. Respondent agrees. Government Code sections 76104.6 and 76104.7 provide penalties to be assessed on other fines, penalties, or forfeitures, with the assessments being deposited into the DNA Identification Fund. However, the penalties do not apply to the restitution fine and court security fee imposed by the court here (Gov. Code, §§ 76104.6, subd. (a)(3), 76104.7, subd. (c); *People v. Valencia* (2008) 166 Cal.App.4th 1392, 1396), and there was no other fine, penalty or forfeiture on which the DNA assessment could be made. Thus, the \$20 DNA penalty assessment must be stricken.

### **DISPOSITION**

The \$20 DNA penalty assessment is stricken. The clerk of the superior court shall prepare an amended abstract of judgment so reflecting. In all other respects the judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.